SUPREME COURT OF THE UNITED STATES.

No. ~~150~~. 73. 87. 20. 1948.

17.

JOHN K. MITCHELL, PLAINTIFF IN ERROR,

vs.

THE LESSEE OF VICENTE DE ST. MAXENT ET AL.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF FLORIDA.

G. S. Gideon, Printer, 511 Ninth street, Washington, D. C.

17 - 2014

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GIDEON, Print.

Pleas held before the honorable the District Court of the United States for the northern district of Florida, at Pensacola, in a cause therein depending, wherein John Doe, on demise of Vicente de St. Maxent, Josefa Chappotin, and her husband, Antonio Chappotin, Yrene Bombalier, and her husband, Santiago Bombalier, Dolores de Palma, and her husband, Ramon de Palmer, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, are plaintiffs, and John K. Mitchell is defendant.

December 3d, 1857.

Now, at this day came the said John Doe, on demise of Vicente de St. Maxent, Josefa Chappotin, and her husband, Antonio Chappotin, Yrene Bombalier, and her husband, Santiago Bombalier, Dolores de Palma, and her husband, Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, and filed herein the following declaration and notice in the words and figures following, to wit:

Declaration and Notice.

In the District Court of the United States for the Northern district of Florida, at Pensacola.

Rule day in December, A. D. 1857.

To wit: Richard Roe was summoned to answer John Doe of a plea, wherefore he, the said Richard Roe, with force and arms, &c., entered into two hundred and sixty-four acres of land, situated and lying in the county of Escambia, State of Florida, being so much of a certain tract of land known in the United States survey as section forty-two, (42) or the F. M. St. Maxent grant, in township two, (2) range thirty, (30) south and west, as lies east of a line running from a point on the northern boundary of the said tract of land fifty chains and ninety-five hundredths west from the northeast corner of the said tract, and running thence to the bay of Pensacola on a line parallel to the western boundary line of said tract, which Vicente de St. Maxent, Josefa Chappotin, and her husband, Antonio Chappotin, Yrene Bombalier, and her husband, Santiago Bombalier, Dolores de Palma, and her husband, Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, who are residents of the island of Cuba, subjects of the queen of Spain, and aliens, had demised to the said John Doe for a term which is not yet expired, and ejected him from his said

farm. And also, wherefore, the said Richard Roe, with force and arms, &c., entered into the undivided half part of the above described two hundred and sixty-four acres of land, which Vicente de St. Maxent, Josefa Chappotin, and her husband, Antonio Chappotin, Yrene Bombalier, and her husband, Santiago Bombalier, Dolores de Palma, and her husband, Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, who are residents of the island of Cuba, subjects of the queen of Spain, and aliens, had demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe, then and there did, to the great damage of the said John Doe, and against the peace of the said State. And thereupon the said John Doe, by his attorney, Rich'd L. Campbell, complains: That, whereas, the said Vicente de St. Maxent, Josefa Chappotin, and her husband, Antonio Chappotin, Yrene Bombalier, and her husband, Santiago Bombalier, Dolores de Palma, and her husband, Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, on the 1st day of December, A. D. 1857, in the county aforesaid, had demised to the said John Doe the above described two hundred and sixty-four acres of land, to have and to hold the same to the said John Doe and his assigns, from said 1st day of December, A. D. 1857, for and during, and unto the full end and term of ten years from thence next ensuing, and fully to be completed and ended. And also that whereas the said Vicente de St. Maxent, Josefa Chappotin, and her husband Antonio Chappotin, Yrene Bombalier, and her husband Santiago Bombalier, Dolores de Palma, and her husband Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justeniani, and Ysabel Justeniani, on the 1st day of December, A. D. 1857, in the county aforesaid, had demised to the said John Doe the aforesaid undivided half of the above described two hundred and sixty four acres of land, to have and to hold the same to the said John Doe and his assigns, from the said 1st day of December, A. D. 1857, for and during, and unto the full end and term of eleven years for thence next ensuing, and fully to be completed and ended; by virtue of which said several demises the said John Doe entered into the tenement first and secondly above mentioned, and became and was possessed thereof for the said several terms so to him thereof respectively granted as aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 2d day of December, A. D. 1857, with force and arms entered into the above described two hundred and sixty-four acres of land, in which the said John Doe was so interested in manner and for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from his said

several farms, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the said State; wherefore the said John Doe saith he is injured and hath sustained damage to the value of one hundred dollars, and therefore he brings his suit &c.

RICH'D L. CAMPBELL,
Plaintiffs' Att'y.

To Capt. JOHN K. MITCHELL,
Who is a citizen of the State of Florida:

I am informed you are in possession of, or claim title to the premises in the above declaration of ejectment mentioned, or some part thereof; and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear on the 1st Monday of January, A. D. 1858, in the office of the clerk of the said court, in the city of Pensacola, by some attorney of that court, and then and there by a rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

December 3d, A. D. 1857.

Yours, &c.,
RICHARD ROE.

Endorsed: Doe on dem. Maxent and others vs. Richard Roe.
Filed Decem. 3d, 1857.
Copy issued December 3d, 1857.

C. N. JORDAN, *Clerk.*

Marshal's Return.

A copy of the within declaration and notice was handed to John K. Mitchell on the 3d day of December, A. D. 1857.

E. E. BLACKBURN,
U. S. Marshal, Florida.
By WM. McKAIN,
Dept. Marshal.

RICH'D L. CAMPBELL,
Plaintiffs' Att'y.

And on a subsequent day came the defendant and filed his pleas in the words and figures following, to wit:

In the District Court of the U. S. for the Northern dist. of Florida, at Pensacola, rule day of February, 1858.

DOE, on demise of Vicente de St. Maxent and others,
vs.
RICHARD ROE and JOHN K. MITCHELL. } Ejectment.

And the said John K. Mitchell, by his attorney, comes and defend the wrong and injury, when &c., and says he is not guilty of the supposed trespass and ejectment above laid to his charge, in manner and form as the said John Doe hath above thereof complained against him; and of this he puts himself upon the country, &c.

DILLON JORDAN,
Att'y for Def't.

John K. Mitchell, being duly sworn, makes oath, that the above plea is true in substance, and that it is not interposed simply for the purpose of delay.

JNO. K. MITCHELL.

Sworn to and subscribed before me, this 5th July, 1858.
M. P. DE RIOBOO, *Clerk.*

Endorsed: Doe, on demise, &c., vs. Roe and John K. Mitchell. Plea of not guilty.

Filed 5th July, 1858.

M. P. DE RIOBOO, *Clerk.*

And now, at this day, to wit, the nineteenth day of August, A. D. 1859, came the parties, and the following order was made:

JOHN DOE, on demise of Vicente de St. Maxent, Josefa Chappotin and her husband, Antonio Chappotin, Yrene Bombalier and her husband, Santiago Bombalier, Dolores de Palma and her husband, Ramon de Palma, Francisco Justeniani, Yrene Justeniani, Joaquin Justeniani, Pedro Maria Justeniani, Dolores Justenianiand Ysabel Justeniani,	R. L. Campbell.
vs.	Ejectment.
JOHN K. MITCHELL.	Dillon Jordan.

The parties agreed to the following statement of facts, and submit them to the court as a special verdict, and pray the judgment of the court thereon in the same manner as if they were found by the jury. The lands in controversy were granted to Francisco Maximiliano de St. Maxent, by the Crown of Spain, in the year 1816, and the grant was recognised and confirmed by Congress in the year 1823, and the plaintiffs are his children, and also his heirs at law if they are entitled to inherit the land. The said Francisco Maximiliano de St. Maxent was a subject of the Crown of Spain from his birth until his death, and never was a citizen of the United States, nor was he an inhabitant of the Territory of Florida at the time of its cession by Spain to the United States, nor has he been since.

The plaintiffs, his lawful children, are now the subjects of the Crown of Spain, and always have been, and were not inhabitants of the Territory of Florida at the time of its cession by Spain to the United States, nor had they been since.

It is also admitted that the said St. Maxent, the father, died, being a resident of the island of Cuba, on the 25th day of November, A. D. 1825, and that no administration was ever taken out on his estate in Florida.

They further admit and agree, that on the 7th day of March, A. D. 1825, one Thomas Commyns instituted a suit by attachment against the said St. Maxent, the father of the plaintiffs, in the superior court of West Florida, which sat at Pensacola, and obtained a judgment thereon, the record of which suit and judgment thereon, together with all the process thereon issued, the return on the attachment, and all returns on the final process or executions, are hereto attached as an exhibit to this agreement, and made part thereof. It is also admitted that the lands described in the levy of attachment embraced the *the* land in controversy. It also admitted that the marshal of the western district of Florida sold the land under the execution to him directed, on the 6th day of February, A. D. 1827, and executed a deed to Thomas Commyns, the plaintiff, in attachment therefor, which said deed, with the endorsements thereon, are hereto attached as Exhibit "B" to this case and forms part of it.

It is also admitted that Thomas Commyns did convey by deed dated 10th day of November, 1827, to F. Moreno and F. Commyns, the said lands, a copy of which deed is also attached to this agreed case, and made part thereof; and further, that the said F. Moreno and F. Commyns did, on the 7th day of December, 1835, convey said land to Robert Mitchell, the father of the defendant, a copy of which deed is also hereto attached, marked Exhibit "D," and made part of this agreed case. It is also agreed that the record and deeds hereto attached, with all the returns on the process, are to be construed according to their legal effect, and that they embrace the land in controversy. And it is further admitted that the defendant claims the land in controversy, as the son and heir of his father, Robert Mitchell, who is dead. And it is also admitted that there was no one in possession of the land prior to the sale by the marshal, nor has there been an actual pedis possessio since, though the defendant has paid the taxes. It is also agreed that there was no marshal for the said district at the time of issuing and service of the attachment; and if, upon these facts, thus agreed to, the court should be of opinion that the plaintiffs are entitled to recover as heirs-at-law of their father, St. Maxent, then a verdict of guilty against the defendant is to be returned, and judgment thereon rendered in favor of the plaintiffs for one cent damages, and also for the recovery of the land. But if the court be of opinion that the plaintiffs are not entitled to recover on

these facts thus stated as aforesaid, then a verdict of not guilty is to be rendered, and judgment thereon is to be rendered in favor of the defendant. It is also understood and agreed that the party against whom the decision may be made, reserves the right to except to the judgment of the court, and without any formal exception, this agreed statement shall be considered as the bill of exceptions, and so treated upon a writ of error to the Supreme Court of the United States. And it is also agreed that the lands in controversy are worth more than two thousand dollars. And the court being of the opinion that the plaintiff is entitled to the whole of the demised premises in the plaintiffs' declaration mentioned, and that the defendant is guilty of the trespass and ejectment in the said declaration complained of, therefore it is considered by the court that the plaintiff recover against the defendant his term yet to come in the said demised premises, together with his damages of one cent as above agreed upon, and his costs by him about his suit in this behalf expended, and that the marshal of the northern district of Florida cause him to have his possession of his term aforesaid yet to come.

District Court of the United States for the Northern district of Florida—Special June Term, 1859.

JOHN DOE, on demise of Vicente de St. Maxent, Josefa, and her husband, Antonio Chappotin, Yrene, and her husband, Santiago Bombalier, Dolores, and her husband, Ramon de Palma, Francisco Maximilian Justiniani, Yrene Justiniani, Joaquin Justiniani, Pedro Maria Justiniani, Dolores Justiniani and Ysabel Justiniani,
vs.
JOHN K. MITCHELL.
} Ejectment.

Be it remembered, that on the trial of this cause, the parties agreed to a statement of facts as a special verdict, and submitted said statement of facts to the court as a special verdict, which said statement of facts so admitted is in the following words and figures, to wit:

District Court of United States for the Northern district of Florida—At Pensacola.

DOE, on the demise of Maxent et al.,
vs.
JOHN K. MITCHELL.
} Ejectment.

The parties agree to the following statement of facts, and submit them to the court as a special verdict, and pray the judgment

of the court thereon in the same manner as if they were found by the jury.

The lands in controversy were granted to Francisco Maximilian de St. Maxent by the Crown of Spain in the year 1816, and this grant was recognised and confirmed by Congress in the year 1823; and the plaintiffs are his children, and also his heirs-at-law, if they are entitled to inherit the land.

The said Francisco Maximilian de St. Maxent was a subject of the Crown of Spain from his birth until his death, and never was a citizen of the United States, nor was he an inhabitant of the Territory of Florida at the time of its cession by Spain to the United States, nor has he been since.

The plaintiffs, his lawful children, are now the subjects of the Crown of Spain, and always have been, and were not inhabitants of the Territory of Florida at the time of its cession by Spain to the United States, nor have they been since.

It is also admitted that the said St. Maxent, the father, died, being a resident of the island of Cuba, on the 25th day of November, A. D. 1825, and that no administration was ever taken out on his estate in Florida.

They further admit and agree, that on the 7th day of March, A. D. 1825, one Thomas Commyns instituted a suit by attachment against the said St. Maxent, the father of the plaintiffs, in the superior court of West Florida, which sat at Pensacola, and obtained a judgment thereon, the record of which suit and judgment thereon, together with all the process thereon issued, the return on the attachment, and all returns on the final process or execution, are hereto attached as an exhibit to this agreement, and made part thereof.

It is also admitted that the lands described in the levy of attachment embrace the *the* land in controversy. It is also admitted that the marshal of the western district of Florida sold the land, under the execution to him directed, on the 6th day of February, A. D. 1827, and executed a deed to Thomas Commyns, the plaintiff, in attachment therefor, which said deed, with the endorsements thereon, are hereto attached as exhibit "B" to this case, and forms part of it.

It is also admitted that Thomas Commyns did convey, by deed dated 10th day of November, 1827, to F. Moreno and F. Commyns the said land, a copy of which deed is also attached to this agreed case, and made part thereof; and further, that the said F. Moreno and F. Commyns did, on the 7th day of December, 1835, convey said land to Robert Mitchell, the father of the defendant, a copy of which deed is also hereto attached, marked exhibit "D," and made part of this agreed case.

It is also agreed, that the record and deeds hereto attached, with all the returns on the process, are to be construed according to their legal effect, and that they embrace the land in controversy.

And it is further admitted that the defendant claims the land in controversy, as the son and heir of his father, Robert Mitchell, who is dead.

And it is also admitted that there was no one in possession of the land prior to the sale by the marshal, nor has there been an actual pedis possessio since, though the defendant has paid the taxes.

It is also agreed that there was no marshal for the said district at the time of issuing and service of the attachment. And if upon these facts, thus agreed to, the court should be of opinion that the plaintiffs are entitled to recover, as heirs-at-law of their father, St. Maxent, then a verdict of guilty against the defendant is to be returned, and judgment thereon rendered in favor of the plaintiffs for one cent damages, and also for the recovery of the land. But if the court be of opinion that the plaintiffs are not entitled to recover on the facts thus stated as aforesaid, then a verdict of not guilty is to be rendered, and judgment thereon is to be rendered in favor of the defendant.

It is also understood and agreed, that the party against whom the decision may be made, reserves the right to except to the judgment of the court, and without any formal exception, this agreed statement shall be considered as the bill of exceptions, and so treated upon a writ of error to the Supreme Court of the United States; and it is also agreed that the lands in controversy are worth more than two thousand dollars.

RICH'D L. CAMPBELL,
Pl'tffs' Att'y.

DILLON JORDAN,
Defendant's Attorney.

The record of the attachment suit by Thomas Commyns against Francisco Maximilian de St. Maxent, referred to in and made an exhibit by said statement of facts, is in the words and figures following, to wit:

Pleas held before the Honorable the Superior Court of West Florida, in a cause wherein Thomas Commyns, as executor of the estate of Thomas Commyns, deceased, is plaintiff, and Francisco Maximiliano de St. Maxent is defendant.

Affidavit for Attachment.

Personally appeared before me, a justice of the peace in and for Escambia county, this seventh day of March, 1852, Thomas Commyns, executor of the last will and testament of Thomas Commyns, late of said county, deceased, who being duly sworn, deposeth and saith, that Francisco Maximiliano de St. Maxent is indebted to him, as executor as aforesaid, in the sum of two hundred and twelve dollars and seventy-five cents; that the claim of

the said Thomas is founded upon two several notes, and the said Thomas is desirous of procuring an attachment against the goods and chattels, *against the goods and chattels*, lands and tenements of the said Francisco. That the said Francisco resides beyond the limits of the Territory of Florida, without having left an agent authorized to receive service of process against him, and that he has reason to fear the loss of said debt, unless a writ of attachment be issued.

THOMAS COMMYNS.

Sworn and subscribed to before this 7 March, 1825.
ROBERT MITCHELL, *J. P.*

Endorsed: Filed 21st March, 1825.

Know all men by these presents, that we, Thomas Commyns, Eugene Lavalle, and Benito T. Caro, are held and firmly bound unto Francisco Maximiliano de St. Maxent, in the sum of four hundred and twenty-four dollars lawful money, for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

The condition of the above obligation is such, that whereas the said Thomas Commyns, surviving executor of the last will and testament of Thomas Commyns, deceased, is about to obtain against the goods and chattels, lands and tenements of the said Francisco, a writ of attachment: Now, if the said Thomas Commyns shall pay all costs and damages which shall result to the said Francisco, by reason of the issuing of said attachment, and the failure to prosecute the same to effect, then this obligation to be void, otherwise to remain in full force and virtue.

Given under our hands and seals, this seventh day of March, 1825.

THOMAS COMMYNS, [SEAL.]
EUGENE LAVALLE, [SEAL.]
BENITO T. CARO. [SEAL.]

Signed, sealed, and delivered in presence of—
ROB'T MITCHELL.

Endorsed: Filed 21st March, 1825.

Writ of Attachment.

ESCAMBIA COUNTY,
Territory of Florida, ss.

To the Sheriff of said County, greeting:

Whereas Thomas Commyns having this day made oath before me that Francisco Maximiliano de St. Maxent is indebted to the estate of Thomas Commyns, deceased, of which the aforesaid T.

Commyns is executor, in the sum of two hundred and twelve dollars and seventy-five cents, you are therefore commanded to attach and take into your custody so much of the effects of the said Maxent as will satisfy the above sum, and all costs of suit. Herein fail not, and return this writ to the superior court, to be held in Pensacola, on the first Monday in May next.

Given under my hand this 7th day of March, 1825.

ROBERT MITCHELL,
Justice of the Peace.

Sheriff's Return.

Levied this attachment upon the Casa Blanca tract of land belonging to the defendant, situated adjoining the city of Pensacola on the west.

Pensacola, March 8th, 1825.

W. DAVISON,
Sh'ff S. C.

Notice of Publication.

THOMAS COMMYNS, surviving ex'r of the estate of Thomas Commyns, deceased,
vs.
FRANCISCO MAXIMILIANO DE MAXENT.

In the Superior Court for the Western district of Florida.

A writ of attachment has been this day obtained in the above case, returnable to the May term, 1825, of said court.

THOMAS COMMYNS,
Surviving Ex'r, &c.

March 7th, 1825.

Affidavit of Publication.

W. Hazell Hunt, editor and publisher of the Pensacola Gazette, being duly sworn, deposeth and saith, that an advertisement, of which the annexed is a copy, was published in said Gazette, a paper published in Pensacola, Florida, for six successive weeks, commencing on the 12th day of March, A. D. 1825.

W. HAZELL HUNT.

Sworn to and subscribed before me, this the 12th Nov'r, 1825.

N. S. PARMANTIER,
Ass. Judge Escambia C'ty.

Declaration.

THOMAS COMMYNS, ex'r of the last will and testament of Thomas Commyns, late of Escambia county, dec'd,
vs.
FRANCISCO MAXIMILIANO DE ST. MAXENT.

In the Superior Court, May Term, 1825, Western district.

Thomas Commyns, surviving executor of the last will and testament of Thomas Commyns, deceased, by his attorney, complains of Francisco Maximiliano de St. Maxent, of a plea that he render unto him the sum of two hundred and twelve dollars and seventy-five cents, lawful money of the United States, which he, the said Francisco, from him, the said Thomas Commyns, executor as aforesaid, unjustly detains; for that heretofore, to wit, at Pensacola, in the district aforesaid, on the twenty-seventh day of September, in the year of our Lord eighteen hundred and seventeen, the said Francisco was indebted to the estate of the said Thomas Commyns, deceased; and being so indebted, he, the said Francisco, in consideration thereof, then and there made his certain promissory note in writing, and delivered the same to the said Thomas Commyns, executor as aforesaid, whereby he, the said Francisco, then and there undertook and faithfully promised the said Thomas Commyns, surviving executor as aforesaid, to pay to him, the said last mentioned Thomas, the sum of one hundred and six dollars and thirty-seven and a half cents, whensoever he, the said Francisco, should be thereto afterwards requested. And for that, also, heretofore, to wit, on the day and year aforesaid, at Pensacola aforesaid, the said Francisco was indebted to the said estate in another sum of money, to wit, the sum of one hundred and six dollars and thirty-seven and a half cents; and being so indebted, he, the said Francisco, in consideration thereof, then and there made his certain promissory note in writing, whereby he, the said Francisco, then and there faithfully promised the said Thomas, surviving executor aforesaid, to pay him the said last mentioned sum of money whenever he should be thereto afterwards requested. And for that, also, heretofore, to wit, at Pensacola aforesaid, on the day and year aforesaid, the said Francisco was indebted to the said Thomas, surviving executor as aforesaid, in the further sum of two hundred and twelve dollars, for a large quantity, to wit, the quantity of one thousand seven hundred and two rations of bread, before that time furnished by the said Thomas Commyns, deceased, in his lifetime, to the said Francisco, to wit, at Pensacola aforesaid, on the day and year aforesaid; and being so indebted, he, the said Francisco, then and there by his two several promissory notes, dated the day and year aforesaid, at Pensacola aforesaid, promised the said Thomas, surviving executor as aforesaid, to pay him the said sum of two hundred and twelve dollars and seventy-five cents, whenever he, the said Francisco, should be thereto afterwards requested. And for that, also, heretofore, to wit, on the day and year aforesaid, at Pensacola aforesaid, the said Francisco was indebted to the said Thomas, executor as aforesaid, in the sum of two hundred and twelve dollars and seventy-five cents, lawful money of the United States, for so much money by him, the said Francisco, be-

fore that time had and received to and for the use of the said Thomas, executor as aforesaid; and being so indebted to the said Francisco, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Pensacola aforesaid, undertook and faithfully promised the said Thomas, executor as aforesaid, to pay him the said sum of money whenever he should be thereto afterwards requested; yet the said Francisco, notwithstanding his said several promises so made as aforesaid, contriving and fraudulently intending to deceive the said Thomas, executor as aforesaid, hath not paid the said several sums of money, or either of them or any part thereof, but to pay the same hath wholly refused, and still doth refuse, to the plaintiff's damage five hundred dollars, wherefore he sues. And the said plaintiff brings into court here the letters testamentary of the said Thomas Commyns, deceased, whereby it fully appears to the said court here, that the said Thomas Commyns and Mary L. Commyns were executors of the last will and testament of the said Thomas Commyns, deceased, and hath the execution thereof. And the said Thomas Commyns, executor as aforesaid, avers that the said Mary L. Commyns, executrix of said last will and testament, to wit, at Pensacola aforesaid, after the making of the said several promises, to wit, on the day and year aforesaid, departed this life.

R. K. CALL and
B. D. WRIGHT, *for Pl'ff.*

Copies of Notes.

Habilitac. del año 1816.

Abonaré a la succesion de Dn. Tomas Commyns, la suma de ciento seio pesos tres rs. por resto de doscientos doce ps. seis rs. que le devia el S'or Coronel Brigadier Dn. Fran'co Max'o de Sn. Maxent, por el importe de.

Original Note on file.

Habilitac. del año de 1816.

Abonaré á la succesion de Dn. Tomas Commyns, por cuenta del S'or Coronel el Brigadier Dn. Fran'co Max'o de Sn. Maxent la suma de ciento seis pesos tres rs. a cuenta de doscientos doce pesos seis rs., por el importe de mil setecientos dos rac's de pan a real cada una q'e anteriorm'to le subministro el expresado Commyns.

Pansacola, 27 de Sep'e, de 1817.

FRAN'CO DE VILLIERS.

No. 108.
Son 106 ps. 3 rs.
Vto. Bno. Int'e.
F. MAXENT,
LUIS PIERNAS.

Endorsement on Note.

Para a la orden de Dn. Fernando Moreno.

COMO ALVACEA,
THOMAS COMMYNS.

Original Note on File.

Habilitac'n del año de 1816.

Abonaré a la succesion de Dn. Tomas Commyns la suma de ciento seis pesos tres rs. por resto de dosciento doce ps. seis rs. que le devia el S'or Coronel Brigadier Dn. Fran'co Max'o de S'n Maxent por el importe de mil setecientos dos rac's de pan a real cada una. Panzacola, 27 de Sep're, de 1817.

FRAN'CO DE VILLIERS,
Int'e LUIS PIERNAS.

No. 109.
Son 106 p's 3 r's.
V'TO BUENO,
F. MAXENT.

Endorsement on Note.

Paza a la orden de Dn. Fernando Moreno.

COMO ALVACEA.
THOMAS COMMYNS.

Order of Continuance.

Monday, the 2d day of May, A. D. 1825.

Present, Hon. Henry Brackenride, judge. Thomas Commyns vs. F. M. de St. Maxent.

Ordered that this case be continued.

H. M. BRACKENRIDGE,
Judge Supr. C't W. F.

Judgment.

Saturday, 12th November, 1825.

Present, Hon. Henry M. Brackenridge, judge.

THOMAS COMMYNS, surviving executor of the estate of Thomas Commyns, deceased,
vs.
FRANCISCO MAXIMILIANO DE ST. MAXENT.

This day came the said plaintiff by his attorney, but the said defendant, though solemnly called, came not, but maketh default; whereupon it is considered and ordered by the court that the said plaintiff do recover against the said defendant the sum of two hundred and twelve dollars and seventy-five cents, with interest there-

on, from the 27th day of September, 1817, until paid; and it is further ordered, that the said plaintiff do recover against the said defendant his costs by him about his suit in this behalf expended.

H. M. BRACKENRIDGE,
Judge Supr. Ct. W. F.

Execution.

The Territory of Florida to the Sheriff of Escambia county, greeting:

You are hereby commanded, that of the estate of Francisco Maximiliano de St. Maxent, late of your bailiwick, you cause to be made the sum of two hundred and twelve dollars and seventy-five cents, which Thomas Commyns, ex'r of Thomas Commyns, deceased, late in our superior court, recovered against the said Maxent for debt; also $13 and 50 cts., which to the said Thomas Commyns, in our said court, was adjudged for his costs by him in and about his suit in this behalf expended, whereof the said Francisco Maximiliano de St. Maxent is convict, as appears to us of record, and that you have the same before the judge of our said court, at the court-house in Pensacola, on the 15th day of January next, to satisfy and pay the debt and costs aforesaid, and have you then and there this writ.

Witness John Miller, clerk of our said court, at the court-house aforesaid, this 26th day of November, 1825, and of the independence of the United States the 50th.

[L. S.] JOHN MILLER, *Clerk.*
By W. HAZELL HUNT, *D. C.*

Endorsement on Execution.

Levied upon the Casa Blanca tract of land belonging to this defendant, and advertised the same to be sold on the 4th of April next, no other property being found.

December 1st, 1825.

W. DAVISON,
Sh'ff Es. C.

Advertisement of Sale.

Sheriff's Sale.

Superior Court, West Florida.

THOS. COMMYNS, ex'r of Thos. Commyns, deceased, vs. FRANCISCO MAXIMILIANO DE ST. MAXENT. } Fi. Fa.

By virtue of this execution, I have taken the right, title, and interest of this defendant to all that remainder of the unsold land contained in the "Casa Blanca tract" of 800 arpens, adjoining to this city on the west, and bounded on the south by Pensacola bay,

and shall proceed on Tuesday, the 4th of April next, at 12 o'clock, at the court-house, to sell at public auction for cash the defendant's right to so much of the aforesaid tract of land as will pay the sum of two hundred and twelve dollars 75 cents debt, and all costs due upon this writ.

W. DAVISON,
Sh'ff Es. County.

SHERIFF'S OFFICE, PENSACOLA, *Dec. 1st*, 1825.

Venditioni Exponas.

TERRITORY OF FLORIDA,
Escambia County.
Western District Superior Court.

Whereas by our writ of fieri facias, we lately, in the name of the Territory, commanded you "that of the estate of Francisco Maximiliano de San Maxent, late of your bailiwick, you cause to be made the sum of two hundred and twelve dollars and seventy-five cents, with interest thereon from the 27th day of September, 1817, until paid, which Thomas Commyns, executor of Thomas Commyns, deceased, late in our superior court, recovered against the said F. M. de San Maxent for debt, also $13 and 50 cents, which to the said Thomas Commyns, executor as aforesaid, in our said court was adjudged for his costs, by him about his suit in this behalf expended, whereof the said F. M. de San Maxent is convict, as appears to us of record, and that you have the same before the judge of our said court, at the court-house in the city of Pensacola, on the 15th day of January next, to satisfy and pay the debt and costs aforesaid;" and you at that day returned to our hon. court aforesaid, that you had "levied upon the Casa Blanca tract of land belonging to this defendant, and advertised the same to be sold on the 4th of April next, no other property being found:" Therefore you are, in the name of the Territory aforesaid, commanded that you expose to sale, in the manner before directed, the said Casa Blanca tract of land belonging to the said Francisco Maximiliano de San Maxent, by you in form aforesaid levied upon, and sell the same for the best price that can be got therefor; and that you cause to be made therefrom the debt and costs aforesaid, together with $12 and 87½ cents additional costs, by the said Thomas Commyns, executor of Thomas Commyns, deceased, in this behalf expended, as appears to us of record; and that you have the moneys arising from such sale before the judge of our said court, at the court-house in Pensacola, on the 13th day of May next, to render to the said Thomas Commyns, executor as aforesaid, the debt and costs aforesaid, and have then and there this writ.

Witness Wm. Hazell Hunt, clerk of our said court, at the court-house aforesaid, this the 13th day of February, A. D. 1826, and in the 50th year of the independence of the United States of America.

[L. S.] W. HAZELL HUNT, *Clerk*.

Endorsement on Writ Venditioni Exponas.

Levied this writ upon all the unsold land contained in the Casa Blanca tract of eight hundred arpents, adjoining to the city of Pensacola on the west, and the same is advertised to be sold on the 4th day of April next.

February 4th, 1826.

W. DAVISON,
Sh'ff Es. C.

Stay upon Writ Venditioni Exponas.

This venditioni exponas has been stayed by a writ of injunction, and is now returned without making any money upon it.

April 3d, 1826.

W. DAVISON,
Sh'ff Es. C.

Execution.

The Territory of Florida to the Marshal of West Florida, greeting:

You are hereby commanded, that of the estate of Francisco Maximiliano de San Maxent, late of your bailiwick, you cause to be made the sum of two hundred and twelve dollars and seventy-five cents, with interest thereon from the twenty-seventh day of September, 1817, until paid, which Thomas Commyns, surviving executor of the estate of Thomas Commyns, dec'd, late in our superior court recovered against the said Francisco Maximiliano de San Maxent for debt; also $39 and 12½ cents, which to the said Thomas Commyns, ex'r aforesaid, in our said court was adjudged for his costs by him about his suit in this behalf expended, whereof the said Francisco Maximiliano de San Maxent is convict, as appears to us of record, and that you have the same before the judge of our said court, at the court-house, in Pensacola, on the 9th day of February next, to satisfy and pay the debt and costs aforesaid, and have then there this writ.

Witness W. Hazell Hunt, clerk of our said court, at the court-house aforesaid, this twenty-first day of December, 1826, and of the independence of the United States the 51st year.

W. HAZELL HUNT, *Clerk.*

Return upon Execution.

The Casa Blanca tract of land has been deeded to the plaintiff in satisfaction of his debt and interest, and the costs has been paid, and the execution satisfied in full.

July, A. D. 1827.

W. SEBREE,
Marshal W. F.

Certificate of Clerk.

STATE OF FLORIDA,
Escambia County.

I, F. E. de la Rua, clerk of the circuit court in and for the county of Escambia, in the western circuit of the State of Florida, do hereby certify that the foregoing sixteen pages contain a true and perfect transcript in the case therein stated, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and *and* the seal of our said court, at Pensacola, this 2d day of November, A. D. 1857.

[SEAL.]

F. E. DE LA RUA,
Clerk C't Court.

Endorsed: Thomas Commyns, ex'or of Thos. Commyns, vs. Fran'co Maximiliano de St. Maxent. Transcript of record.

Exhibit (B) referred to in the said statement of facts is in the words and figures following, (to wit:)

"This indenture, made and entered into this sixth day of February, in the year of our Lord one thousand eight hundred and twenty-seven, between William Sebree, marshal for the district of West Florida, of the one part, and Thomas Commyns, surviving executor of the estate of Thomas Commyns, deceased, of the other, and both of the county of Escambia, witnesseth: that whereas Thomas Commyns, surviving executor of the estate of Thomas Commyns, deceased, instituted a suit in the superior court for the district of West Florida against Francisco Maximiliano de San Maxent, and at the November term, 1826, of said court, recovered a judgment against the said Francisco Maximiliano de San Maxent, for the sum of two hundred and twelve dollars and seventy-five cents, with interest thereon from the 27th day of September, 1817, until paid;" and an execution issued on the twenty-first day of December, 1826, against the estate of the said Francisco Maximiliano de San Maxent, to me directed and delivered, and in favor of the said Thomas Commyns, surviving executor as aforesaid, commanding me to make the aforesaid debt and interest, and also the costs of suit, out of the estate of the said Francisco Maximiliano de San Maxent aforesaid, and by virtue of which I levied the execution upon the tract of land known as the "Casa Blanca," situated, lying, and being on the west side of the city of Pensacola, adjoining the out-lots of the same, bounded on the south by the bay, north and west by crown lands, and including the spring known as "Casa Blanca," and agreeably to the plat and certificates of survey of the said tract of land, which is of record in the archives office of the city of Pensacola, and for the boundaries of which special reference is made; the aforesaid tract of land known as the "Casa Blanca," together with all the

buildings and appurtenances thereunto belonging, or all the right, title, and interest of the Francisco Maximiliano de San Maxent, was seized and taken by virtue of the said execution, to satisfy and pay the debt, interest, and costs called for by the same, and after having been advertised as the law directs, it was sold in "front of the court-house," in the city of Pensacola, on the 6th day of February, 1827, to Thomas Commyns, surviving ex'r as aforesaid, for the sum of three hundred and eighty-seven dollars, he being the highest bidder:

Now be it known, that I, William Sebree, marshal as aforesaid, and by virtre of the authority vested in me by law, have bargained and sold, and by these presents do bargain, alien, sell, and convey unto the said Thomas Commyns, surviving ex'r as aforesaid, all the right, title, interest, and claim of the said Francisco Maximiliano de San Maxent to the aforesaid tract of land known as the "Casa Blanca," and such as he had and held on the 21st day of December, 1826, together with all and singular the appurtenances thereunto belonging, and as above described, for and in consideration of the sum of three hundred and eighty-seven dollars, the receipt whereof is hereby acknowledged, unto him, the said Thomas Commyns, surviving ex'r as aforesaid, and by virtue of the authority vested in me by law, do warrant and forever defend the right, title, claim, and interest of the same, unto him, the said Thomas Commyns, surviving ex'r as aforesaid, against the claim of the said Francisco Maximiliano de San Maxent as aforesaid, but against the claims of no other persons.

In testimony whereof, I have hereunto set my hand and seal, this day and year first above written.

WILLIAM SEBREE, [L. S.]
Marshal W. F.

The words "the" and "office," in the 10th line from the top of the 2d page of this deed, interlined before signing.

TERRITORY OF FLORIDA,
County of Escambia.

Before me, Micajah Crupper, clerk of the county court for the county aforesaid, personally appeared William Sebree, marshal for the district of West Florida, and acknowledged the foregoing instrument of writing to be his act and deed for the purposes mentioned.

Acknowledged before me this twentieth day of June, A. D. 1827.

M. CRUPPER, *Clerk*,
By JOHN JERRISON, *D. Clerk*.

STATE OF FLORIDA,
Escambia County.

I, F. E. de la Rua, clerk of the circuit court in and for the

county aforesaid, do hereby certify, that the foregoing is a true and perfect copy of the deed from Wm. Sebree, marshal, &c., to Thomas Commyns, surviving ex'r, &c., and of the certificate of acknowledgment made before M. Crupper, clerk, by John Jerrison, D. clerk, as the same remains of record in my office, in book A, pages 516 and 517.

In witness whereof, I have hereunto set my hand and seal, official, at Pensacola, this 20th of Dec'r, A. D. 1857.

[L. S.] F. E. DE LA RUA,
Clerk C't Court.

Endorsed: Marshal to Commyns. Casa Blanca tract.

Certified copy of deed.
Fees, 1 50.

F. E. DE LA RUA,
Clerk C't Court.

The deed of conveyance from Thomas Commyns to F. Moreno and F. Commyns, referred to in said statement of facts, is in the following words and figures, (to wit:)

This indenture, made this tenth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, between Thomas Commyns, of the county of Escambia, and Territory of Florida, of the one part, and Francisco Moreno and Francisco Commyns, of the same county and Territory, of the other part, witnesseth: That for and in consideration of the sum of five hundred dollars, in hand paid by the said Francisco Moreno and Francisco Comyns, the receipt whereof is hereby acknowledged, the said Thomas Comyns hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Francisco Moreno and Francisco Commyns one undivided half part of a tract of land containing eight hundred arpens, adjoining the city of Pensacola on the west, in the county and Territory aforesaid, fronting Pensacola bay, and known generally by the appellation of "Casa Blanca," granted by the Spanish government to Don Francisco Maximiliano de San Maxent, and purchased by said Thomas Comyns at marshal's sale, and more particularly described in the plat and certificate of survey in the office of the keeper of the public archives: to have and to hold the said undivided half of said tract, with all and singular its appurtenances, unto them, the said Francisco Moreno and Francisco Commyns, their heirs and assigns, forever. And the said Thomas Comyns, for himself, his heirs, executors, and assigns, will forever warrant and defend the title to the said land hereby conveyed against himself, his heirs, and assigns, forever, and against the claim of all and every person claiming by, through, or under him.

Given under my hand and seal the day and year above written.

THOMAS COMMYNS. [SEAL.]

Mem.—(The word "person" interlined before signing.)

Sealed and delivered in presence of—

FOSTER S. CHAPMAN,
J. G. DRAKE,

TERRITORY OF FLORIDA,
County of Escambia.

Before me, M. Crupper, clerk of the county court for the county aforesaid, personally appeared Thomas Commyns, and acknowledged the foregoing instrument of writing to be his act and deed, for the purposes thereto mentioned.

Acknowledged before me, this tenth day of November, A. D. 1827.

M. CRUPPER, *Cl'k.*

Endorsed: Thos. Commyns to F. Moreno and F. Commyns. Deed.

Copied in Record Book B, page 7.

Fees recording,	87½
Certificate,	25
	$1 12½

Exhibit (D) referred to in said statement of facts, is in the following words and figures, to wit:

Know all men by these presents, that we, Francisco Moreno and Francisco Commyns, of the city of Pensacola, in the county of Escambia and Territory of Florida, for and in consideration of the sum of five thousand dollars to us in hand paid by Robert Mitchell of the city, county, and Territory aforesaid, the receipt whereof we do hereby acknowledge, have remised, released, and by these presents, for ourselves and our heirs, do remise, release, and forever quit-claim unto the said Robert Mitchell, his heirs and assigns forever, all the right, title, interest, property, estate, and demand which we, the said Francisco Moreno and Francisco Commyns, have, in, and to a certain tract, piece, or parcel of land lying and being in the county aforesaid, being an undivided interest in a tract of land adjoining the city of Pensacola on the west, known generally as "Casa Blanca," granted by the Spanish government to Don Francisco Maximiliano de San Maxent, and purchased by Thomas Commyns at marshal's sale, and sold and conveyed by the said Thomas Commyns to us, on the tenth day of November, in the year one thousand eight hundred and twenty-seven, as appears by the deed of the said Thomas Commyns duly recorded in the county court of the said county, which undivided interest amounts to three hundred and fifty arpens, more or less: to have and to hold the said premises with all the privileges and appurtenances unto him,

the said Robert Mitchell, his heirs and assigns forever, so that neither we, the said Francisco Moreno and Francisco Commyns, nor any other person or persons in our name or behalf, shall or will hereafter claim or demand any right or title to the premises aforesaid, or any part thereof; but they and every of them shall, by these presents, be excluded and forever barred. And Margarita Moreno, wife of said Francisco Moreno, and Maria Josepha Commyns, wife of said Francisco Commyns, in consideration of one dollar to each of them paid, the receipt whereof is hereby acknowledged, do hereby release and relinquish to the said Robert Mitchell, his heirs and assigns, all their right and title of dower in and to the before mentioned and described premises.

In witness whereof, we, the said Francisco Moreno and Margarita Moreno, his wife, and Francisco Commyns and Maria Josepha Commyns, his wife, have hereunto set our hands and seals, the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-five.

FRAN'CO MORENO, [SEAL.]
MARGARITA MORENO, [SEAL.]
FRAN'CO COMMYNS, [SEAL.]
MARIE JOSEPH COMMYNS. [SEAL.]

Signed, sealed, and delivered in presence of—
F. T. COMMYNS,
THO. M. BLOUNT.

TERRITORY OF FLORIDA,
County of Escambia, ss.

Personally appeared before me, Thomas M. Blount, a justice of the peace in and for the county aforesaid, Francisco Moreno and Margarita Moreno, his wife, and acknowledged that they had executed the foregoing instrument of writing for the uses and purposes therein mentioned; and the said Margarita Moreno having been by me separately and apart from her said husband examined touching the execution of the same, and the contents thereof having been by me fully made known to her, she declared that she had executed the same of her own free will and accord, and without the fear, threats, coercion, or compulsion of her said husband.

Given under my hand, at Pensacola, in the county aforesaid, this seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-five.

THO. M. BLOUNT,
J. P. Es. Co.

TERRITORY OF FLORIDA,
County of Escambia, ss.

Personally appeared before me, Thomas M. Blount, a justice of the peace in and for the county aforesaid, Francisco Commyns and

Maria Josepha Commyns, his wife, and acknowledged that they had executed the foregoing instrument of writing for the uses and purposes therein mentioned, and the said Maria Josepha Commyns having been by me, separately and apart from her said husband, examined touching the execution of the same, and the contents thereof having been by me fully made known to her, she declared that she had executed the same of her own free will and accord, and without the fear, threats, coercion or compulsion of her said husband.

Given under my hand, at Pensacola, in the county aforesaid, this seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty five.

THO. M. BLOUNT,
J. P. Es. Co.

Endorsed: Francisco Moreno and wife, Francisco Commyns and wife, to Robert Mitchell. Deed.

Recorded December 18, 1835; recorded in book C, page 255.
Fees $1 75, paid.

M. CRUPPER, *Clerk.*

And the court having rendered judgment in favor of the plaintiff, the defendant excepts to the said ruling and judgment of the court; and forasmuch as the record of the attachment suit by Thomas Commyns against Francisco Maximiliano de St. Maxent, and exhibits B and D, and also the deed of conveyance from F. Moreno and F. Commyns to Robert Mitchell, referred to in said statement of facts, do not appear on the record of said court, the defendant tenders this, his bill of exception, and prays that the same may be signed and sealed by the court, and made a part of the record, which is accordingly done.

August 19th, 1859.

McQUEEN McINTOSH, [SEAL.]
U. S. Judge, Nor. Dis. Florida.

Supreme Court of the United States.

JOHN K. MITCHELL
vs.
JOHN DOE, on demise of Vicente de St. Maxent, Josefa and her husband, Antonio Chappotin, Irene and her husband, Santiago Bombalier, Dolores and her husband, Ramon de Palma, Francisco Maximilian Justiniani, Irene Justiniani, Joaquin Justiniani, Pedro Maria Justiniani, Dolores Justiniani and Isabel Justiniani.

In Error.

Know all men by these presents, that we, John K. Mitchell and Heny Ahrens, are held and firmly bound unto the above named Vicente de St. Maxent, Josefa and her husband, Antonio Chappotin, Irene and her husband, Santiago Bombalier, Dolores and her husband, Ramon de Palmer, Francisco Maximilian Justiniani, Joaquin Justiniani, Pedro Maria Justiniani, Dolores Justiniani and Isabel Justiniani, in the sum of six hundred dollars, for the payment of which unto the said Vicente de St. Maxent, Josefa and her husband, Antonio Chappotin, Irene and her husband, Santiago Bombalier, Dolores and her husband, Ramon de Palma, Francisco Maximilian Justiniani, Irene Justiniani, Joaquin Justiniani, Pedro Maria Justiniani, Dolores Justiniani and Isabel Justiniani, we bind ourselves, and each of us jointly and severally, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of August, A. D. 1859.

Whereas the above bounden John K. Mitchell hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered on the 19th day of August, A. D. 1859, in the above entitled suit, by the district court of the United States for the northern district of Florida, sitting at Pensacola:

Now, therefore, the condition of this obligation is such, that if the above bounden, John K. Mitchell, shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good this plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JNO. K MITCHELL, [SEAL.]
HENRY AHRENS. [SEAL.]

In presence of—
GEORGE LOYAL, jr.,
GEO. MAULSBY, as to the signature of Jno. K. Mitchell.
DILLON JORDAN, as to the signature of Henry Ahrens.

Approved by me, this October 27, A. D. 1859.
McQUEEN McINTOSH,
U. S. Judge Nor. Dis. Florida.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the judge of the District Court of the United States for the northern district of Florida, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between John Doe, on the demise of Vicente de St. Maxent, Josefa and her husband, Antonio Chappotin, Yrene and her husband, Santiago Bombalier, Dolores and her husband, Ramon de Palma, Francisco Maximilian Justiniani, Yrene Justiniani, Joaquin Jus-

tiniani, Pedro Maria Justiniani, Dolores Justiniani, and Ysabel Justiniani, and John K. Mitchell, a manifest error hath happened, to the great damage of the said John K. Mitchell, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, and what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 25th day of August, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

[SEAL.] M. P. DE RIOBOO,
Clerk U. S. Dis. Court,
Nor. Dis. of Florida, at Pensacola.

THE UNITED STATES OF AMERICA, *ss.*

To Vicente de St. Maxent, Josefa and her husband, Antonio Chappotin, Yrene and her husband, Santiago Bombalier, Dolores and her husband, Ramon de Palma, Francisco Maximilian Justiniani, Yrene Justiniani, Joaquin Justiniani, Pedro Maria Justiniani, Dolores Justiniani, and Ysabel Justiniani, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the northern district of Florida, wherein John K. Mitchell is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 22d August, in the year of our Lord one thousand eight hundred and fifty-nine.

McQUEEN McINTOSH,
U. S. Judge, Nor. Dis. Florida.

Dillon Jordan being duly sworn, says that he did, on the 25th day of August, A. D. 1859, serve the within citation upon Richard

L. Campbell, esq., the attorney of record for the defendants in error, by handing him a copy of the said citation, and showing him the original at the same time.

DILLON JORDAN.

Sworn to and subscribed before the undersigned, this 25th Aug't, 1859.

M. P. DE RIOBOO,
Clerk U. S. Dis. Court,
Nor. Dis. of Florida, at Pensacola.

NORTHERN DISTRICT OF FLORIDA,
Western Division.

I, Maximo P. de Rioboo, clerk of the United States district court, northern district of Florida, at Pensacola, do hereby certify that the foregoing thirty-two pages contain a true and perfect transcript of the record in the case therein stated, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and the seal of our said court, at Pensacola, this 26th day of November, A. D. 1859.

[SEAL.]

M. P. DE RIOBOO,
Clerk U. S. Dis. Court,
Nor. Dis. of Florida, at Pensacola.

Filed 20th Dec'r, 1859.

[REC. CL., D. T., 1860.]—4

Supreme Court of the United States.

No. 17.

JOHN K. MITCHELL, PLAINTIFF IN ERROR,

vs.

THE LESSEE OF VICINTE DE ST. MAXENT & AL.

This case comes up by writ of error to the District Court for the northern district of Florida.

In that court an action of ejectment was brought by the defendant in error, and the cause was submitted to the court upon an agreed statement of facts as on a special verdict, which, with the record in the ejectment suit, is made part of this record, and on the facts so agreed the court gave judgment for the plaintiff below.

The plaintiff below made title to the lands in controversy as lessee of the heirs-at-law of Francisco Maximiliano de St. Maxent, to whom the land had been granted by the crown of Spain in 1816, and confirmed by Congress in 1823. (See Agreed Statement, Rec. p. 7.)

The defendant below claimed title under a sale by the marshal of the district of West Florida, by virtue of a writ of *fieri facias* issued on the 21st day of December, 1826, (Rec. pp. 16, 17,) in the usual form, against the estate of Francisco Maximiliano de St. Maxent. And the sole question is, as to the validity of that sale.

"That no individual or public officer can sell and convey a good title to the land of another, unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents without hesitation, and that the

person invested with such a power must pursue with precision the course prescribed by law or his act is invalid, is a principle which has been repeatedly recognized in this court."

Thatcher *vs.* Powell, (6 Wh., 125.)
See also, Jackson *vs.* Esty, (7 Wend., 148.)

The court below having, in effect, ruled that the marshal's sale was invalid, the defendant in error insists that its ruling was correct, and the sale was a nullity, on the following grounds:

1. That the writ of *fieri facias* under which the sale was made, was tested and issued after the death of the defendant in the suit wherein the said writ was issued.

2. That the judgment in the said suit was void; for whereas the suit was commenced by attachment only, and the defendant never was served with process, and never was within the jurisdiction of the court, yet the judgment upon which the *fi. fa.* issued was a general judgment *in personam*, against the defendant in the attachment.

3. That the court never acquired any jurisdiction in the attachment suit, because the writ of attachment was issued contrary to law, inasmuch as security was not given, as required by law.

4. That the court never acquired any jurisdiction in the attachment suit, because the writ of attachment was not directed to or executed by any officer authorized to execute the writ.

I.

THE WRIT OF FIERI FACIAS WAS TESTED AFTER THE DEATH OF THE DEFENDANT, AND SO WAS VOID.

Francisco de St. Maxent died on the 25th day of November, 1825. (Agreed Statement, Record, p. 7.) On the 26th day of November *fieri facias* was issued directed to the sheriff of Escambia county. (Record, p. 14.) He returned it December 1, 1825, levied on the land in question. Then, followed a *venditioni exponas*, (Record, p. 15,) but all proceedings were stayed by injunction. (Record, p. 16.) Then on the 21st of December, 1826, a writ of *fieri facias* against the said St. Maxent was issued, directed to the marshal of the district, (Record, p. 16,) and under this the land was sold and conveyed to the grantor of the defendant in the ejectment. (Record, p. 7.)

St. Maxent, the defendant in the attachment, having died on the 25th of November, the writ of *fieri facias* issued and tested on the 21st of December following, without any *scire facias* against his heirs or *terre tenants*, is void.

Erwin's Lessee *vs.* Dundas, 4 Howard, 58.
Woodcock *vs.* Bennett, 1 Cowan, 738.

This being a principle of the common law, was introduced into Florida by the act of the Legislative Council, passed June 29, 1823, sec. 1. (Acts, &c., p. 136.)

II.

THE JUDGMENT UPON WHICH THE PLAINTIFF'S TITLE DEPENDS IS VOID, AND "DEBILE FUNDAMENTUM FALLIT OPUS."

The proceeding was by foreign attachment, against the lands of the absent defendant, who was never served with process, nor ever, at any stage of the case, appeared personally, or by attorney. (Agreed Statement and Record, *passim.*) Such a proceeding is in its nature special and limited. It is merely a proceeding *in rem*, and no *general judgment* can be founded thereon, but only a judgment of condemnation of the defendant's interest in the particular lands attached. But in this case there was no judgment of condemnation, nor any appropriate or competent judgment, or final process *in rem*. The attachment is treated by the court as equivalent to process served, and as if it had brought the person of the defendant within its jurisdiction; and a *general judgment* establishing the debt is rendered, and a general execution—*a fieri facias*—against all the property of the defendant followed this judgment. (Record, pp. 13, 14–16.)

This is not mere error to be corrected in a direct proceeding for that purpose, but goes to the jurisdiction, and may be alleged in any proceeding where that record is relied on.

Story, Confl. Laws, sec. 549, and cases there cited; also Burge Com., there cited in note 1.

And the jurisdiction of a court, when its judgment is brought collaterally before another court as evidence, may be disproved as well as any other alleged fact.

Webster *vs.* Reid, 11 How., 437.

3 Horn. 1 - Act 24 contains same history in a, Act 24.

III.

THE WRIT OF ATTACHMENT WAS ISSUED CONTRARY TO LAW.

The writ was issued by a justice of the peace, (Record, p. 9,) under the territorial act of December 28, 1824, which (sec. 3) requires that, before the issuing of the writ, bond shall be given in double the amount of the debt claimed. (Acts of the Legislative Council, pp. 193.) The debt claimed was $212 75; the bond was for $424 00 only. (Record, pp. 8, 9.)

IV.

THE WRIT WAS NOT DIRECTED TO, OR EXECUTED BY, AN OFFICER AUTHORIZED TO EXECUTE IT.

The territorial act, sec. 1, authorizes justices of the peace "*to grant writs of attachment, directed to the ministerial officer of the superior and county courts, commanding him,*" &c. (Territorial Acts, p. 192.) By this, *reddendo singula singulis*, it is to be understood that writs returnable to a superior court should be directed to the ministerial officer of that court, who, by the act of Congress of May 26, 1824, chap. 163, sec. 3, (4 Stat., 45,) was the United States marshal. The writ in this case was made returnable to the superior court, but was directed to the sheriff of Escambia county, (Record, pp. 9, 10,) and was executed and returned by him, and by no other person. (Record, p. 10.)

CONCLUSION.

It is therefore submitted that the judgment of the district court should be affirmed.

J. M. CARLISLE,
JOHN D. McPHERSON,
Of Counsel for Defendant in Error.

IN U. S. SUPREME COURT.

No. 18.

JOHN K. MITCHEL

versus

LESSEES OF DE ST. MAXENT.

The plaintiff in error is defendant in the action of ejectment. He claims the land in controversy, as son and sole heir of his father, Robert Mitchel, who derived title from Moreno and Comyns, by deed of 7th Dec., 1835, to whom the land was conveyed by Thomas Comyns, on 10th Nov. 1827.

This title is derived under an attachment suit instituted by Thomas Comyns against the ancestor of the lessees, on the 7th March, 1825, by which the locus in quo was levied on. Judgment was rendered on 12th Nov. 1825, and execution issued on 26th Nov. 1825, under which the land was sold, and a deed of conveyance thereof executed by the Marshal, to Thomas Comyns.

The defendant in attachment, a citizen and resident

of Cuba, died in Cuba, on 25th Nov. 1825, the day previous to the test of the execution, and this ejectment is brought by his heirs, on 3d Dec. 1857, thirty two years after judgment, to recover the land, while enjoying the benefit of the purchase money.

At Common Law, if the execution be tested in the life-time, it may be taken out and executed after death, for the execution related to the judgment, and might be tested immediately after it was rendered.

The doctrine of relation is carried still further; for if defendant die in vacation, judgment might still be entered after his death, and execution issued as of the preceding term.

This rule was limited by the Statute of 29 Carl. 2d, to the parties themselves, and bona fide purchasers were protected from its operation.

In the eye of the law, therefore, it is the judgment which conclusively settles the rights of the parties on the day of its rendition, and a fiction is resorted to, to prevent a subsequent disability from interfering with its enforcement.

To the like effect is the 6th section of the act of 27th June, 1823, of the Legislative Council, Territory of Florida, (pamphlet acts, p. 39.) "The service of attachment on lands, etc., shall bind the property attached, and a judgment obtained therein shall have relation to the time of the service of attachment, and the plaintiff shall have priority of payment out of the

property attached, except as to valid subsisting liens, etc."

In this case the plaintiff in attachment had a right to an execution, tested the day after the judgment, and it is clear that if it had been so tested, the death could not have vitiated it.

The parties, therefore, have nothing to complain of, and if this irregularity could be taken advantage of at all, as against a bona fide purchaser at a judicial sale, it must be by a direct proceeding, and not collaterally.

Voorhees vs. Bk. U. S., 10 Pet., is in many respects parallel to this. The plaintiff in ejectment relied upon his purchase under an attachment suit, which was resisted on the ground that none of the prerequisites required by statute to vest the jurisdiction had been complied with, and defendant had never appeared.—The court held that while the judgment remained in force it was itself evidence of the right to the thing adjudged, and that errors, however apparent, can only be examined by the appellate power. That it would be a well merited reproach to jurisprudence if an innocent purchaser who had paid his money on the faith of an order of the court should not have the same protection under an erroneous proceeding, as the party who derived the benefit accruing from it. The purchaser under judicial proceedings pays the plaintiff his demand on the property sold; to the extent of this, he discharges the defendant from his adjudged obligation.

The land lying in Florida was under its sovereignty

and jurisdiction, without regard to the citizenship of the owner, and the jurisdiction of its courts was ample.

The proceeding was by attachment, and by its levy the plaintiff acquired a right in the specific property consummated by the judgment. It thus became sequestered in the hands of the law, and was held for his benefit as fully as if it had been levied on by a fi fa.— The levy of a writ, or a levy of a fi. fa., stand under the same sanctions. Both are solemn judicial orders, executed by the officer of the law, under his official responsibilities; and if this be true, the case of Doe vs. Taylor, 13 How. 293, is conclusive of the question. On the objection to the titlein ejectment, that the venditioni exponas under which the land was sold was tested subsequent to the death, the court held that as the judgment operated as a lien on the land, and a prior execution attached "specifically upon the subject of its operation," that "the rights of the parties to the subject matter were determined, and all controversy closed. The law had taken the subject entirely to itself, to be applied by its own authority and its own rules."

Here the party has his levy and a judgment, which the court in this case regarded as conclusive, and closing all controversy. He may have issued a mere "venditioni," all he wanted was an order of sale.— That he sued out a fi. fa,, instead of this, cannot vary

the rights of the parties, which were fixed by the levy and judgment.

Randolph vs. Carleton, 8 Ala., 616.

Garey vs. Hines, 8 Ala., 839.

An attachment is a proceeding in rem. Notice is served upon the thing itself. This is necessarily constructive notice to all who have any interest, or can assert any title. Every such person is considered as a party to the proceeding, and the suit does not abate by death.

Penhallow vs. Doane, 1 Cond. Rep. 44.

The Mary, 3 do 306.

Story's Confl. Laws, § 592, 503.

Sergent on Attachment.

As soon as such process is commenced, and the arrest of the property is made, it is in the custody of the law. For it is a general rule in proceeding in rem, that the custody of the thing in controversy belongs to the court in which the suit is pending.

Burke vs. Trewit, 1 Mason, 100.

The judgment of a competent court, proceeding in rem, is conclusive with respect to the thing itself, and operates as an absolute change of property; and no court of co-ordinate jurisdiction can examine into it. If an erroneous judgment binds the property on which it acts, it will not bind the less because its error is apparent. Of this error advantage can only be taken in a court capable of correcting it.

Williams vs. Amroyd, 7 Cranch, 423.

Elliot vs. Pearsal, 1. Pet. 340.
Thompson vs. Tolmie, 2 Pet. 169.

The language of the court in the case last cited is, "when there is a fair sale, and the decree executed by a conveyance, the purchaser will not be bound to look beyond the decree, if the facts necessary to give jurisdiction appear upon the record."

Upon these well settled principles, this court held, in the case of Whiting vs. Bk. U. S., 13 Pet. 13, that the death of the mortgagor, after the decree of foreclosure and sale, but before the sale was made, constituted no ground for a bill of review.

"If say the court) the original decree was unobjectionable and conclusive; if there has been no fraud in the subsequent sale; and if there has been no prejudice, in a legal sense, to any of the rights of the plaintiff in the original decree, or the sale, then, although there was no revivor before the sale, there is no error upon which a bill of review will lie to entitle the plaintiffs to a reversal."

The case now before the court appeals more strongly to its sense of justice. *There*, the application was to a court of equity, which, in affording relief, always compels the party to do equity. *Here*, there is an action at Common Law, where, if the party succeed, he recovers the land while retaining the purchase money for which it was sold.

The only remaining point is as to the service of the attachment by the sheriff, instead of the marshal.

The statement of facts shows that there was no marshal at the time. The writ was made returnable to the Superior Court, and was levied by the sheriff of that court on 8th March, 1825, (p. 10,) and acted on by the court in its rendition of judgment.

The third section of the Territorial Act of 1823, already referred to, entitled, "An act to regulate the mode of proceeding in attachments," provides that when the sum demanded exceeds fifty dollars, "the writ may be directed to the sheriff, coroner, or other ministerial officer of the superior or county court respectively."

This mode of service is repeated in the act of 17th February, 1833. "It shall be lawful for the clerk etc., to issue writs of attachment, directed to the marshal, sheriff, etc. Duval's Compilation of Acts of Florida, p. 386.

The legislative power was conferred by Act of Congress, 30th March, 1822, on the Governor and Legislative Council, and extended "to all rightful subjects of legislation."

The judicial power was vested in two superior courts, and in such inferior courts and justices of the peace as the Legislative Council may, from time to time, establish." (U. S. Statutes at Large, vol. 3, p. 654.)

Under the authority thus conferred, the territorial act of 1823 was passed, and the service of process by sheriff was good, until there was a positive repeal of

this provision, either by the legislative council or by Congress.

It is true that the act of Congress referred to provides, "that there shall be appointed two marshals, one for each of the said Supreme Courts;" but unless this appointment was made, no question could possibly arise as to the authority of the sheriff to act.

This act seems not to have been carried into effect for the same provisions as to the courts, and the appointment of marshals, are reiterated in the act of 26th May, 1824. Statutes at Large, 4th vol., p. 54.

Even if a marshal had been appointed, this would not necessarily have excluded the action of the sheriff, who, like the marshal, was an officer of the United States, but holding by a different appointment.

The Governor and Territorial Council were the appointees of the United States, and legislated in their behalf, and the appointment of a sheriff, in the exercise of their delegated trust, was the appointment of their principal. The case would then be presented of two officers, each equally authorized to discharge the same functions.

A prior statute is not repealed by a subsequent one containing no words of express repeal, except it be so absolutely inconsistent that the two cannot co-exist.

On these grounds it is respectfully submitted that the judgment must be reversed.

P. PHILLIPS,

For Appellee.

Nov. 10th, 1866.